

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DESIGN BASICS, LLC)	CASE NO.
11112 John Galt Blvd.)	
Omaha, NE 68137,)	JUDGE:
)	
Plaintiff,)	<u>ORIGINAL COMPLAINT</u>
)	
v.)	
)	JURY DEMANDED
PETROS HOMES, INC.)	
c/o Sam Petros)	
10474 Broadview Road)	
Broadview Heights, OH 44147,)	
)	
Defendant.)	

Design Basics, LLC, Plaintiff, files this Complaint against Petros Homes, Inc. (“Defendant”) and for its causes of action alleges the following:

Parties

1. Design Basics, LLC is a Nebraska Limited Liability Company with its principal place of business in Omaha, Nebraska. Under Articles of Merger executed on July 1, 2009, Design Basics, LLC is the successor by merger to Design Basics, Inc., and as such is the owner of all assets (including copyrights, trade and service names, trade and service marks, and all causes of action) that Design Basics, Inc. owned as of that date. Design Basics, LLC and its predecessor (Design Basics, Inc.) will hereinafter be referred to as “Design Basics” or “Plaintiff.”

2. Design Basics is engaged in the business of creating, marketing, publishing and licensing the use of “architectural works” (as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990 (“AWCPA”), both codified at 17 U.S.C. § 101 et seq.) and technical drawings depicting such architectural works.

3. Defendant Petros Homes, Inc. (“Petros Homes”) is a corporation organized under the laws of the State of Ohio with its principle place of business in Broadview Heights, Ohio. Petros Homes may be served through its registered agent, Sam Petros, at 10474 Broadview Road, Broadview Heights, Ohio 44147.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction of this case under 28 U.S.C. § 1338 because this action arises under federal copyright law, 17 U.S.C. § 101 et seq.

5. Venue is proper in this District under 28 U.S.C. § 1400(a) because the Defendant may be found in this District. Furthermore, or in the alternative, venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in this District; and the Defendant resides and does business in this District.

Factual Background

6. Design Basics is a building design firm which creates, markets, and licenses the use of “architectural works” (as that term is defined in the Copyright Act and the AWCBA) and technical drawings depicting architectural works. The firm owns copyrights protecting the architectural works and technical drawings it has created.

7. Design Basics is the author and the owner of all copyrights (both architectural works and certain technical drawings depicting such architectural works) in the following designs: Plan No 2408 – Crawford, Plan No. 2326 – Greensboro; Plan No. 2355 – Waverly; Plan No. 4998 – Holden and Plan No. 7614 – Southwick.

8. Design Basics registered the following architectural works copyrights with the United States Copyright Office:

Title	Certificate of Registration
Plan No. 4998 – Holden	VA 889-319

9. Design Basics registered the following technical drawings copyrights with the United States Copyright Office:

Title	Certificate of Registration
Plan No. 2408 – Crawford	VA 485-123
Plan No. 2326 – Greensboro	VA 485-078
Plan No. 2355 – Waverly	VA 485-069
Plan No. 4988 – Holden	VA 899-323; VA 879-101 ¹

10. For the remaining copyrights (architectural works copyrights for Plan No 2408 – Crawford, Plan No. 2326 – Greensboro, Plan No. 2355 – Waverly, and Plan No. 7614 – Southwick; technical drawings copyrights for Plan No. 7614 – Southwick), Design Basics applied for the registration of all such copyrights with the United States Copyright Office. For each of the applications referenced herein, Design Basics (1) paid the requisite fees to the Copyright Office; (2) deposited copies of the works with the Copyright Office; and (3) sent the registration application to the Copyright Office. The Copyright Office received all such applications, fees and deposits.

11. The foregoing works described in paragraphs 7-10 above will be referred to collectively as the “Copyrighted Works.”

12. For many years, the Copyrighted Works have been widely published nationwide, including in this District, in numerous Design Basics plan books and publications. Additionally, each of the Copyrighted Works has been published in various online publications including www.designbasics.com.

¹ Part of a collection of technical drawings registered as the “Nostalgia” collection.

13. Each of the Copyrighted Works constitutes original material that is copyrightable under federal law.

14. Design Basics is currently, and at all relevant times has been, the sole owner of all right, title and interest in and to the Copyrighted Works.

15. Defendant engaged, at least in part, in the business of creating, publishing, distributing, and advertising residential home designs through traditional print media, on the internet on sites such as <http://www.petroshomes.com>, and in marketing, advertising, constructing and selling homes built according to such designs.

17. Defendant published, distributed, marketed and advertised certain architectural designs for residential homes, each consisting of a floor plan and exterior elevations that Defendant has identified and marketed under the following model names:

The Edgewater
The Salem
The Lincoln
The Cambridge
The Winchester

18. Defendant is actually aware of Design Basics and the works that Design Basics markets. Sam Petros, CEO and founder of Defendant, began purchasing Design Basics' plans and plan books in 1987, including at least thirty-one plan books and five plans. At all times material to this case, Defendant has had a reasonable opportunity to have viewed the Copyrighted Works.

19. Defendant violated and continues to violate Design Basics' exclusive rights in each of the Copyrighted Works (including the right to reproduce, the right to prepare derivative works and the right to sell), by copying, publishing, distributing, advertising, marketing, selling

and/or constructing in the marketplace, plans, drawings and houses which were copied or otherwise derived from the Copyrighted Works, as detailed below:

- a. The Petros “Edgewater” (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 2408 – Crawford (and any predecessor or derivative thereof).
- b. The Petros “Salem” (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 2326 – Greensboro and Plan No. 4988 – Holden (and any predecessors or derivatives thereof).
- c. The Petros “Lincoln” (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 2355 – Waverly (and any predecessor or derivative thereof).
- d. The Petros “Cambridge” (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 7614 – Southwick (and any predecessor or derivative thereof).
- e. The Petros “Winchester” (and any predecessors, copies or derivatives of that model under the same name or a different name) infringes the Design Basics Plan No. 7614 – Southwick (and any predecessor or derivative thereof).

Cause of Action

Copyright Infringement

20. Design Basics complains of Defendant for copyright infringement, and incorporates paragraphs 1 through 19 above by reference.

21. Defendant’s construction and sale of homes and creation of associated design and construction drawings based on Design Basics’ Copyrighted Works has infringed and continues to infringe Design Basics’ copyrights in the Copyrighted Works.

22. Defendant's creation and publication of non-pictorial representations based on Design Basics' Copyrighted Works have infringed and are infringing Design Basics' copyrights in the Copyrighted Works.

23. Design Basics is entitled to recover the actual damages it suffered as a result of the foregoing infringement, and all of Defendant's profits from such infringement, pursuant to 17 U.S.C. § 504(b).

24. In the alternative to the actual damages and infringer profits sought above, Design Basics is entitled to an award of statutory damages for all infringements of Design Basics' Copyrighted Works, as permitted by 17 U.S.C. § 504(c).

25. Pursuant to 17 U.S.C. § 505, Defendant is liable for Plaintiff's costs and reasonable attorney's fees incurred in this action.

26. In addition, Design Basics is entitled to preliminary and permanent injunctions pursuant to 17 U.S.C. § 502 prohibiting Defendant from further infringement of its copyrights, including but not limited to the further use of infringing plans, creation or use of derivative plans, and construction, sale or rental of infringing structures.

27. Furthermore, this Court should issue an order pursuant to 17 U.S.C. § 503 directing the United States Marshal's Service to (a) impound all copies of the Copyrighted Works, in possession of Defendant or their respective agents or contractors in violation of Plaintiff's exclusive rights, and (b) upon final hearing of this case, to destroy or otherwise dispose of those copies.

Conditions Precedent

28. With respect to all counts, Design Basics generally avers that all conditions precedent to its rights of recovery have occurred or been performed, or have been waived or excused by Defendant.

Jury Demand

29. Pursuant to Federal Rule of Civil Procedure 38, Design Basics respectfully demands trial by jury of all issues so triable.

WHEREFORE, PREMISES CONSIDERED, Design Basics, LLC prays that Defendant Petros Homes, Inc. be cited to appear and answer; and that upon final trial it have and recover from Defendant as set forth above, that it have permanent injunctive relief against Defendant as requested herein, and that it have such and other relief as it may show itself to be entitled.

Respectfully submitted,

/s/ Joshua M. Ryland

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